

# Pennsylvania Clean Indoor Air Act 2018 Annual Legislative Report



**Bureau of Health  
Promotion and Risk  
Reduction**

**December 2018**



**pennsylvania**  
DEPARTMENT OF HEALTH

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## Background

Senate Bill 246, Pennsylvania's Clean Indoor Air Act (CIAA), was passed on June 10, 2008, and became effective on Sept. 11, 2008. This legislation named the Department of Health (DOH) the lead agency for implementation of the CIAA. The DOH's responsibilities related to the CIAA include: 1) educating businesses on how to comply with the CIAA and providing CIAA information to the public; 2) issuing exceptions to businesses that meet specific criteria and monitoring those exceptions; and 3) enforcing the CIAA to ensure public places without exceptions remain tobacco-free and that individuals are not wrongfully exposed to secondhand smoke. Eliminating exposure to secondhand smoke and promoting cessation are two evidence-based strategies cited by the U.S. Centers for Disease Control and Prevention (CDC) that can contribute to a reduction in disease, disability and death. Many reports and studies consistently document reductions in tobacco use following the implementation of smoke-free laws and policies.

The CIAA legislation requires that an annual report to the Legislature be submitted by Dec. 1 each year. This report presents CIAA data for the period Dec. 1, 2017, to Nov. 30, 2018.

## Exceptions

The CIAA has numerous exceptions, five of which require review and approval by the DOH. Exceptions include two types of drinking establishments (referred to in the CIAA as type I drinking establishments and type II drinking establishments), two types of cigar bars (referred to in the CIAA as type I cigar bars and type II cigar bars), and tobacco shops. Currently, there are 1,948 exceptions for drinking establishments, cigar bars and tobacco shops issued in Pennsylvania. See Attachments 1 and 2 for detailed exception information.

Other exceptions include: up to 50 percent of gaming floors of casinos and up to 25 percent of hotel and motel rooms; designated sleeping quarters within full service truck stops; tobacco manufacturer cigar exhibitions, non-profit fundraisers (which feature tobacco products); and private clubs, including fire, ambulance and rescue companies. These exceptions are part of the CIAA and do not require review and approval by the DOH.

Under the CIAA, establishments that have been denied an exception have the right to request reconsideration of that decision. DOH staff follow current departmental policy and work closely with the Office of Legal Counsel to conduct an internal review of requests for reconsideration and make final determinations.

## Exception Renewals

In November 2010, the DOH changed the process of renewing exceptions to a two-year basis to reduce mailings sent to establishments. However, the DOH will begin to issue exceptions annually once again beginning in January 2019 to help reduce confusion among business owners and the public. The DOH will conduct annual renewals of exceptions by completing the following steps:

For Drinking Establishment exception holders:

- Verifying active liquor license status and type with the Pennsylvania Liquor Control Board (PLCB)
- Verifying with the Department of Revenue (DOR) that the percentage of food sales for the entire establishment (for drinking establishment type II holders, the smoking area) is at or below 20 percent
- Verifying establishment type by review of business operation requirements

For Cigar Bar exception holders:

- Verifying active liquor license status and type with the Pennsylvania Liquor Control Board (PLCB)
- Verifying with the DOR that the percentage of tobacco and tobacco-related products is at least 15 percent of the combined gross annual sales of the establishment (for cigar bar type II holders)
- Verifying establishment type of review of business operation requirements

For Tobacco Shop exception holders, the renewal process includes verifying with the DOR that the percentage of tobacco and tobacco-related products is at or above 50 percent of the gross annual sales and verifying establishment type by review of business operation requirements.

If an establishment fails to meet any of the above exception criteria prior to the date the exception expires, DOH revokes the exception.

Sales and use tax (SUT) may be filed electronically with the DOR through the Electronic Tax Information and Data Exchange System (e-TIDES). Because there is a direct link to e-TIDES in the DOH's CIAA database, DOH staff may view SUT information during the internal review process. To educate business owners and encourage utilization of e-TIDES, the DOH collaborated with the DOR to develop an e-TIDES fact sheet that provides details on how to file SUT information for the CIAA on e-TIDES. These instructions are sent to all exception holders and can also be found on the DOH's CIAA website. For establishments who do not have access to a computer and, therefore, cannot file SUT information through e-TIDES, the DOH mails a SUT form to complete and submit before the exception expires to determine eligibility for renewal. The DOH will contact business owners during the renewal process if additional information is needed.

## **Administration**

The DOH utilizes the online CIAA database to store data and information, run custom reports, and enable division staff to track applications and provide reports.

## **Enforcement**

If a public place is subject to licensure by the commonwealth, the CIAA directs the DOH to refer the complaint to the appropriate licensing agency for investigation and enforcement. The DOH has coordinated implementation, enforcement and reporting protocols with all state

agencies involved in the administration of the CIAA. If there is not a state licensing agency with jurisdiction over the potential violator, the complaint is handled by the DOH.

Upon receipt of a first complaint of establishments under DOH enforcement jurisdiction, the DOH notifies the establishment of the complaint, with a copy of the DOH notification of alleged violation letter sent to the DOH regional primary contractor. The regional primary contractor provides additional education and resources as a follow-up to the letter. Regional primary contractors also conduct compliance site visits to establishments for which the DOH has received multiple complaints to provide further follow-up and ensure compliance with the CIAA.

The other agencies involved in CIAA enforcement include:

- The Bureau of Liquor Control Enforcement (BLCE) – handles complaints filed against drinking establishments, cigar bars, bar/restaurants, bar/private clubs and bar/bowling alleys;
- The Pennsylvania Gaming Control Board (PGCB) – has responsibility for the investigation and enforcement of complaints against licensed casinos;
- The Pennsylvania Department of Revenue (DOR) – handles complaints related to businesses possibly falsifying food sales figures to meet CIAA exception criteria;
- The Pennsylvania Department of Human Services (DHS) – responds to complaints related to personal care homes and foster care facilities;
- The Pennsylvania Department of Corrections (DOC) – handles complaints related to state correctional facilities;
- The Pennsylvania Public Utility Commission (PUC) – handles complaints related to taxi cabs;
- The Philadelphia Department of Public Health (PDPH) – responds to complaints of establishments located in Philadelphia County, since the CIAA applies to all counties except Philadelphia; and
- The Pennsylvania Department of Agriculture (DOA) – addresses complaints of smoking occurring in kitchens/food preparation areas in establishments.

During this reporting period, the department received 135 complaints of alleged violations and sent out 56 warning/education letters in response to violations (establishments under DOH enforcement jurisdiction). Additionally, of the total number of complaints received:

- 21 were referred to BLCE;
- 0 were referred to the PGCB;
- 0 were referred to DOR;
- 0 were referred to DHS;
- 15 were referred to DOC;
- 0 were referred to PUC;
- 5 were referred to the PDPH;
- 0 were referred to DOA;
- 1 was related to an establishment currently under appeal, which prohibited the DOH from sending an additional warning letter to that establishment;

- 24 were invalid complaints;<sup>1</sup> and
- 4 resulted in DOH requesting regional primary contractors to conduct compliance site visits.

See Attachment 2 for more detailed information on complaints.

If an establishment not licensed by another agency has been determined to be in violation of the CIAA, the DOH will issue an order to show cause, listing the violation(s) and fine(s) to be assessed. During this reporting period, the DOH issued one order to show cause.

The Department of Human Services continues to notify the DOH of licensing action it has taken against personal care homes. Three of DHS's personal care home regulations directly address the CIAA; personal care homes are cited if a violation is identified during an inspection. DHS tracks the number of homes that fail to comply with the CIAA and submits a report to the DOH on a quarterly basis. Upon receipt of the report, CIAA staff send warning letters and toolkits to homes on the list to educate them about the CIAA and encourage compliance. After letters are sent, the DOH notifies DHS that warning letters have been sent to the homes. During this reporting period, the DOH sent warning letters to 0 DHS facilities not in compliance with the CIAA.

## Appeal Process

Establishments that are denied an exception to the CIAA prohibition on smoking have a right to appeal that denial. During this reporting period, the DOH implemented a change in the appeal procedure that was required to come into compliance with the Pennsylvania's General Rules of Administrative Practice and Procedure (GRAPP).

In December 2017, establishments that applied for a CIAA exception and were denied or renewal denied had a right to request reconsideration to the Director of the Bureau of Health Promotion and Risk Reduction (Bureau). If after that review the denial or renewal denial was upheld, establishments had a right to appeal to the secretary of health. If the secretary of health upheld the denial or renewal denial, establishments had a right to appeal to Commonwealth Court.

Effective Jan. 1, 2018, pursuant to GRAPP, establishments are now required to direct their first appeal of a denial or renewal denial directly to the secretary of health. If the secretary of health upholds the denial or renewal denial, establishments have the right to appeal to Commonwealth Court. Appeals proceed pursuant to all Commonwealth Court appellate rules and procedures. Ultimately, an establishment may ask the Supreme Court of Pennsylvania to review a decision of the Commonwealth Court. The Supreme Court has the right to accept or deny hearing the appeal request. To educate establishments about this change in appeal procedure, the Bureau sent an informational mailing to all establishments who currently hold an exception to the CIAA.

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<sup>1</sup> Invalid complaints are those that do not indicate a violation of the CIAA (i.e., complaints against establishments that have an exception).

During this reporting period, the DOH received the following appeals:

- Appeals to secretary of health: 162
- Appeals to Commonwealth Court: 1
- Appeals to Supreme Court of Pennsylvania: 0

## **Coordination of Resources**

The DOH continues to partner with the following agencies to coordinate and enforce the CIAA:

- Department of Aging;
- Department of Agriculture;
- Department of General Services;
- Department of Human Services;
- Department of Revenue;
- Office of Administration, Bureau of Labor Relations;
- Office of General Counsel;
- Pennsylvania Gaming Control Board;
- Pennsylvania State Police;
- Pennsylvania Liquor Control Board; and
- Bureau of Liquor Control Enforcement.

### Collaboration with the BLCE and PLCB

Within the past year, the DOH has continued to partner with the BLCE and PLCB to enforce the CIAA. Staff from these offices have been very responsive to CIAA-related needs and have played a vital role in CIAA enforcement. Complaints of violations for establishments with liquor licenses are investigated promptly, and findings, including citation information, are reported back to the DOH in a timely manner. BLCE has implemented an internal communication protocol that ensures field office staff are immediately updated of new policies or procedures regarding the CIAA.

In 2014, the BLCE implemented a database of drinking establishments in Pennsylvania that includes whether or not establishments have an exception to the CIAA. BLCE officers frequently utilize the DOH's CIAA website that lists establishments with exceptions when conducting investigations. To provide more comprehensive information to BLCE Officers, the BLCE requested that DOH list the Liquor Identification number (LID) of establishments on the CIAA webpage for their new database software to easily search the site to determine if a business has a CIAA exception. DOH received approval from the Bureau of Licensing, Pennsylvania Liquor Control Board, to post LIDs on the CIAA website so BLCE officers may have access to current CIAA exception information.

### DOH Regional Primary Contractors

The eight DOH regional primary contractors are responsible for providing tobacco use prevention and cessation services throughout the commonwealth, including services relating to the implementation of the CIAA. All primary contractors receive CIAA training, provide technical assistance to affected establishments and assist the DOH in the verification of exception requests.

## Education

The DOH implemented the CIAA in cooperation with the Pennsylvania Alliance to Control Tobacco (PACT), with a focus on providing information and tools to all businesses affected by the CIAA. The CIAA business toolkit explains the law, provides guidance on talking to the public and employees and on the placement of signage, and provides local contacts for additional technical assistance. IT has been distributed in hard copy to over 1,000 businesses impacted by the CIAA in the hospitality industry and is now available online along with the following CIAA resources at [www.health.state.pa.us/ciaa](http://www.health.state.pa.us/ciaa):

- Frequently asked questions;
- Guidance for public places and workplaces;
- Exception request formats;
- Specific guidance related to private clubs;
- Reports of violations; and
- Listing by county of establishments that have been approved for an exception.

After assessing the number of calls to the toll-free CIAA helpline (877-835-9535) and associated costs, the department deactivated the helpline on Feb. 1, 2012. Individuals who contacted the helpline after that date were referred to the department's Clean Indoor Air website at [www.health.state.pa.us/ciaa](http://www.health.state.pa.us/ciaa) to request a Clean Indoor Air Toolkit and signs and to report violations.

Other key partners with the DOH in providing statewide and local education include the Pennsylvania Restaurant Association, the Pennsylvania Tavern Association, as well as the Commanders of the Pennsylvania Veterans of Foreign Wars and the American Legion. Regional primary contractors continue to work steadily with local establishments to provide education and business toolkits to promote compliance with the CIAA.

The map in Attachment 3 is a visual display of the number of CIAA exceptions across the commonwealth. This resource can be shared with partners for educational purposes.



**Clean Indoor Air Act Exception Data as of 11/30/18**

Exception Type	Number of applications received	Number approved/renewed	Number denied	Number renewal denied	Number in appeal status	Number in pending status	Number in relinquish status	Number in closed status	Number in request for information status	Number in revoked status	Number in site visit requested status
Drinking establishment type I	3,566	1,550	127	1,352	76	3	70	330	9	49	0
Drinking establishment type II	789	228	216	205	14	4	26	86	1	6	3
Tobacco shop	381	153	3	172	1	0	1	45	1	5	0
Cigar bar type I	11	3	3	3	0	0	0	2	0	0	0
Cigar bar type II	27	14	3	6	0	0	1	3	0	0	0
<b>Totals</b>	<b>4,774</b>	<b>1,948</b>	<b>352</b>	<b>1,738</b>	<b>91</b>	<b>7</b>	<b>98</b>	<b>466</b>	<b>11</b>	<b>60</b>	<b>3</b>

**Definitions of Status Types**

**Renewal denied** - An application is in this status if it has not met annual renewal criteria (active liquor license status, food sales not exceeding 20 percent, etc.).

**Pending** - An application is in this status if it has been submitted and is under review.

**Relinquish** - An application is in this status if a business owner with a valid exception has voluntarily requested that the exception be revoked.

**Closed** - An application is in this status if an applicant failed to submit missing information within the requested timeframe or if the application is a duplicate.

**Request for information** - An application is in this status if it was submitted without all of the required information. In such cases, department staff notifies applicants via letter of the missing information and asks them to supply the information to the DOH within 10 days.

**Revoked** - An application in this status has been revoked due to an inactive liquor license as reported by PLCB or failure to meet annual renewal criteria (active liquor license status, food sales not exceeding 20 percent or structural criteria).

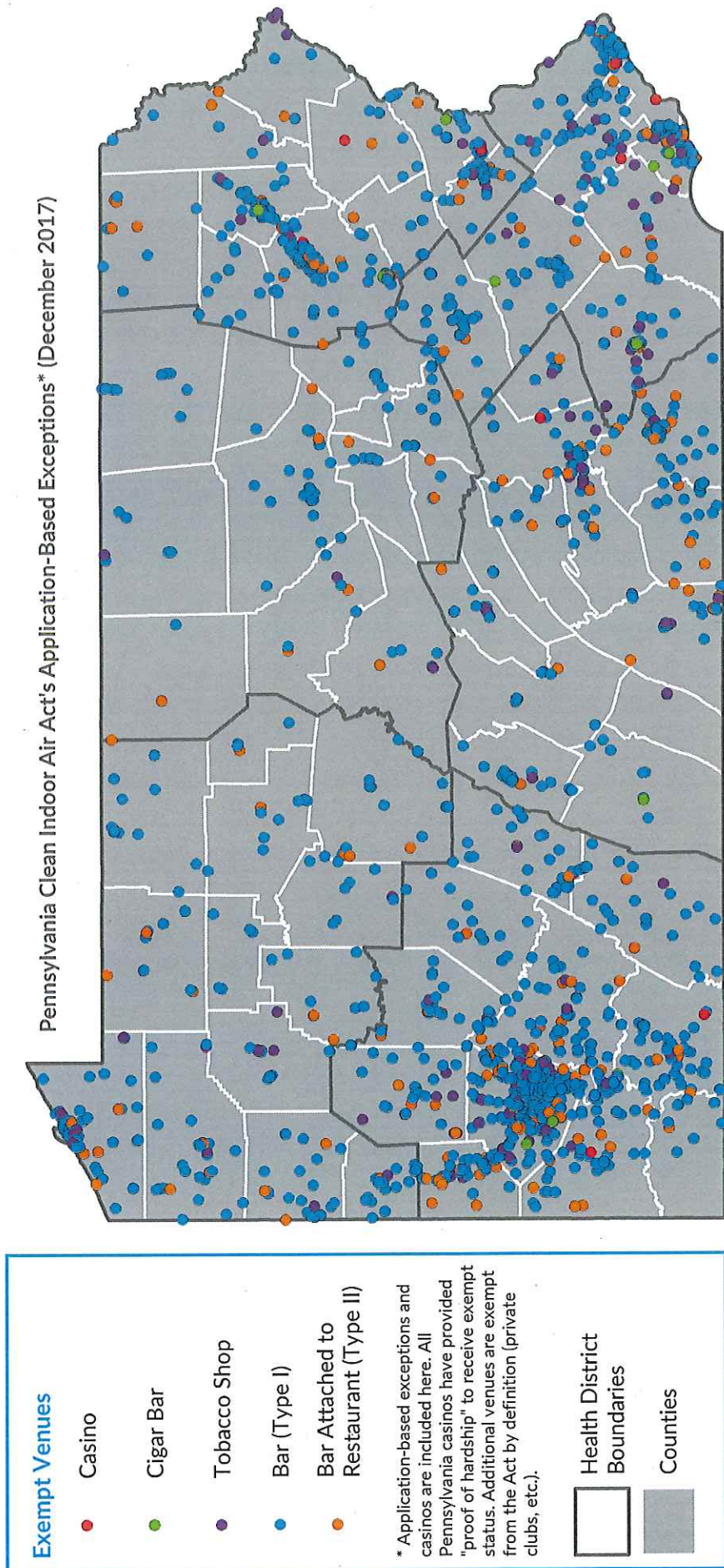
**Site visit requested** - An application is in this status if DOH staff requested that an on-site visit be conducted by a regional primary contractor to assess the establishment's structural compliance with the CIAA. This status applies only to drinking establishment type II and cigar bar type I applications.

**Clean Indoor Air Act Exception and Complaints Data by County  
Dec. 1, 2017 to Nov. 30, 2018**

<b>County</b>	<b>Total Number of Exceptions</b>	<b>Total Number of Complaints</b>
Adams	18	0
Allegheny	384	25
Armstrong	26	0
Beaver	58	1
Bedford	8	1
Berks	37	8
Blair	24	2
Bradford	10	0
Bucks	61	7
Butler	29	0
Cambria	35	0
Cameron	2	0
Carbon	11	0
Centre	8	0
Chester	18	0
Clarion	14	1
Clearfield	22	1
Clinton	8	0
Columbia	11	0
Crawford	32	0
Cumberland	21	5
Dauphin	34	1
Delaware	88	2
Elk	10	0
Erie	67	5
Fayette	56	1
Forest	5	1
Franklin	18	0
Fulton	1	0
Greene	6	1
Huntingdon	8	0
Indiana	21	1
Jefferson	9	0
Juniata	3	0
Lackawanna	48	3
Lancaster	39	3
Lawrence	23	2
Lebanon	12	3
Lehigh	39	7

County	Total Number of Exceptions	Total Number of Complaints
Luzerne	122	7
Lycoming	20	10
McKean	15	1
Mercer	27	5
Mifflin	13	0
Monroe	5	4
Montgomery	44	1
Montour	1	0
Northampton	29	0
Northumberland	24	0
Perry	8	0
Philadelphia	0	7
Pike	8	1
Potter	3	0
Schuylkill	39	3
Snyder	3	0
Somerset	21	2
Sullivan	1	0
Susquehanna	9	0
Tioga	5	0
Union	0	1
Venango	14	0
Warren	11	0
Washington	56	1
Wayne	4	2
Westmoreland	84	2
Wyoming	11	0
York	47	7
<b>Total</b>	<b>1,948</b>	<b>135</b>

# Where are Pennsylvanians still exposed to smoke in the workplace? In 2,196 exempt venues throughout the state...



Notes: Venues with unrecognized addresses have approximate locations based on nearby intersection when possible, and have otherwise been excluded from the map; 99.9% of all venues statewide have been mapped. Symbols of neighboring venues may overlap. Philadelphia County has a separate clean air law; only its casino is included here. Visit [www.pactonline.org](http://www.pactonline.org) for more information on Pennsylvania's 2008 Clean Indoor Air Act (CIAA).

Sources: Pennsylvania Department of Health and Pennsylvania Gaming Control Board.